

Kenneth G. Goldin, Attorney for Petitioner  
Goldin, Hill & Associates, P.C.  
9100 Plainfield Road  
Brookfield IL 60513  
Tel: 708-485-8300  
FAX: 708-485-8301  
kgoldin@ghlaw.net

**Service List: ICC Docket No. 09-0432**

Bonita Benn  
Administrative Law Judge  
Illinois Commerce Commission  
160 N. LaSalle Street – Suite #C-800  
Chicago, Illinois 60601-3104  
[bbenn@icc.illinois.gov](mailto:bbenn@icc.illinois.gov)

Darryl Bradford  
Senior Vice President & General Counsel  
Commonwealth Edison Company  
440 S. LaSalle Street – 33rd floor  
Chicago, Illinois 60605  
[darryl.bradford@exeloncorp.com](mailto:darryl.bradford@exeloncorp.com)

**Thomas S. O'Neill, Sr. Vice President & General Counsel**  
Commonwealth Edison Company  
440 S. LaSalle St., Ste. 3300  
Chicago, IL 60605  
[thomas.oneill@comed.com](mailto:thomas.oneill@comed.com)

**Kendra N. Thompson, Atty. for Commonwealth Edison Company**  
Eimer Stahl Klevorn & Solberg, LLP  
224 S. Michigan Ave., Ste. 1100  
Chicago, IL 60604  
[kthompson@eimerstahl.com](mailto:kthompson@eimerstahl.com)

**Ronit C. Barrett, Atty. for Commonwealth Edison Company**  
Eimer Stahl Klevorn & Solberg  
224 S. Michigan Ave., Ste. 1100  
Chicago, IL 60604  
[rbarrett@eimerstahl.com](mailto:rbarrett@eimerstahl.com)

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>THE CHERRY LANE CONDOMINIUM,</b>	)	
	)	
<b>Petitioner,</b>	)	
	)	
<b>v.</b>	)	<b>Docket No. 09-0432</b>
	)	
<b>COMMONWEALTH EDISON COMPANY,</b>	)	
	)	
<b>Respondent.</b>	)	

**PETITIONER'S RESPONSE TO MOTION TO DISMISS FOR WANT OF  
PROSECUTION**

Now comes Petitioner, The Cherry Lane Condominium ("Petitioner"), and as its response to the Motion to Dismiss for Want of Prosecution ("Motion") filed on June 17, 2011 by Respondent Commonwealth Edison Company ("ComEd") hereby states as follows:

1. In its continuing effort to avoid a hearing on the merits of Petitioner's claim, ComEd filed the within Motion. To the extent cognizable, such Motion seeks to dismiss this action on the basis that Petitioner didn't "formally" file a its Response to ComEd's pending motion to dismiss.
2. In fact, as set forth on Exhibit A hereto, on January 13, 2010 Petitioner timely served its Response to the motion to dismiss on the ALJ, ComEd and its counsel and all other parties to the action.
3. As shown on the electronic docket in this case, on January 2, 2010 ComEd filed its Reply to Petitioner's Response.

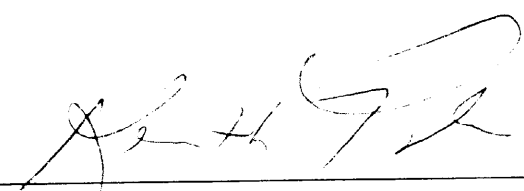
4. The ALJ has repeatedly acknowledged that ComEd's motion to dismiss has been fully briefed and is still awaiting decision by the ALJ.
5. On reviewing the electronic docket in connection with this motion, Petitioner's counsel was actually made aware for the first time that a copy of the Response, which Petitioner's counsel had previously transmitted for electronic filing and which was actually received and replied to by ComEd, did not actually appear on the electronic docket, whether due to clerical error, transmission error or otherwise. Counsel has caused a copy of the Response to be duly filed on the electronic docket concurrently herewith.
6. ComEd has actually received and responded to the Response and cites no prejudice resulting from the electronic filing thereof. ComEd's vague and unspecified conclusions notwithstanding, Petitioner has duly appeared at all hearings, sought the Commission's ruling on the pending MTD and otherwise sought to bring this matter to hearing. It is ComEd's MTD, which Petitioner has asserted is dilatory and without merit, that has delayed the resolution of this matter.
7. ComEd has received and responded to Petitioner's Response and cites no legal or factual basis for its Motion.

**WHEREFORE,** Petitioner respectfully request that the Motion be denied in its entirety and that this matter proceed to trial.

Respectfully submitted,

THE CHERRY LANE CONDOMINIUM

---

By:   
One of its attorneys

Kenneth G. Goldin  
Goldin, Hill & Associates, P.C.  
9100 Plainfield Road  
Brookfield IL 60513  
Tel: 708-485-8300  
FAX: 708-485-8301  
[kgoldin@ghlaw.net](mailto:kgoldin@ghlaw.net)

---

**VERIFICATION**

**I Kenneth G. Goldin, counsel for Petitioner, first being duly sworn, say that I have read the above Response and know what it says. The contents of the Response are true to the best of my knowledge.**

By: 

**Subscribed and sworn to before me on: June 20, 2011**

  
**Notary Public, Illinois**



Small Business Home

Search the Web

[Search](#)

**YAHOO!** SMALL BUSINESS

Welcome  
**kgoldin@ghlaw.net**  
[Sign Out, My  
Account]

[Mail Home](#) - [Help](#)

**Mail**

**Contacts**

**Calendar**

**Notepad**

**[What's New?](#) [Mobile Mail](#) [Options](#)**

[Check Mail](#)

[New](#)

[Mail Search](#)

**Mail Accounts**

ghlaw.net...

yahoo.com

**Folders**

**Inbox (20)**

Drafts (143)

Sent

**Spam (21)** [Empty]

Trash [Empty]

My Photos

My Attachments

**My Folders**

[Add - Edit]

ghlaw files

nextg charts

[Previous](#) | [Next](#) | [Back to Search Results](#)

[Mark as Unr](#)

[Delete](#) [Reply](#) [Forward](#) [Spam](#) [Move...](#)

**Cherry Lane Condominium v. ComEd/Docket No. 09-0432**

Wednesday, January 13, 20

**From:** "kenneth g goldin" <kgoldin@ghlaw.net>

**To:** "Jerry D. Brown" <jbrown@chiconunes.com>, "bbenn@icc.illinois.gov" <bbenn@icc.illinois.gov>, darryl.bradford@exeloncorp.com, ehurley@chiconunes.com

1 File (869KB)



cherrylan..

Judge Benn and Gentlemen:

Attached please find documents which were electronically filed toda captioned docket.

Very truly yours,

Kenneth Goldin

**Goldin, Hill & Associates P.C.**

**9100 Plainfield Road**

**Brookfield IL 60513**

**Tel: 708-485-8300**

**FAX: 708-485-8301**

[Delete](#) [Reply](#) [Forward](#) [Spam](#) [Move...](#)

[Previous](#) | [Next](#) | [Back to Search Results](#)

[Select Message Encoding](#)

**EXHIBIT A**

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**THE CHERRY LANE CONDOMINIUM,**       )  
  )  
      **Petitioner,**                               )  
  )  
      **v.**   )  
  )  
      **COMMONWEALTH EDISON COMPANY,**    )  
  )  
      **Respondent.**                               )

**Docket No. 09-0432**

**PETITIONER'S RESPONSE TO MOTION TO DISMISS**

Now comes Petitioner, The Cherry Lane Condominium ("Petitioner"), and as its response to the Motion to Dismiss ("MTD") filed on December 18, 2009 by Respondent Commonwealth Edison Company ("ComEd") hereby states as follows:

**I.       FACTS**

1.       On September 28, 2009, Petitioner filed its ten-count Formal Complaint (the "Complaint") against ComEd, which Complaint alleges, inter alia, that (a) on or about September 19, 2000, without authorization by Petitioner, ComEd switched the electric service classification of three of Petitioner's four service accounts from a lower rate, Rate 14, to an improper and more expensive rate, Rate 6 (Complaint, par. 15); (b) that after improperly switching Petitioner's billing rate, through on or about February 19, 2002, ComEd improperly measured the quantity and volume of electricity used by Petitioner and failed to properly bill Petitioner for volume of kilowatts of demand (Complaint, par. 21), improperly utilized watt-hour only meters at Petitioner's premises (Complaint, par. 22) and wrongfully billed Petitioner for "in lieu of demand" charges (Complaint, par. 25-

26); (c) ComEd wrongfully failed to bill all of Petitioner's common area service under a single account, resulting in improper and excessive customer charges and other charges (Complaint, par. 6-10); (d) ComEd violated Sections 9-101 and 9-241 of the Illinois Public Utility Act (the "Act") by charging Petitioner excessive and unlawful rates, by discriminating against Petitioner by charging such excessive rates and by failing to refund overcharges or to give credits and rebates required by law to be given to other comparably situated customers (Complaint, par. 61-70); and (e) that ComEd failed to give Petitioner the credits and rebates due under Rider CABA (Complaint, par. 52) and Section 16-103.1 of the Act (Complaint, par. 80-83); and (f) that ComEd violated numerous other provisions of the Act, violated the express provisions of its own filed Rates (Complaint, par. 86-92) and breached the written contract arising under the express terms of ComEd's Rate 6 (Complaint, par. 100-102).

2. The Complaint further alleges, inter alia, that Petitioner first acquired knowledge of ComEd's improper switching, overcharging, mismeasurement and billing errors in November, 2007 (Complaint, par. 47) and that at no time prior to November, 2007, did Petitioner acquire or have any actual knowledge of such improper switching, mismeasurement or overcharging. (Complaint, par. 49).

3. On or about December 18, 2009, ComEd filed its MTD, which MTD asserts in primary part that because Petitioner ostensibly "admits" in an informal complaint filed by Petitioner that "...it knew of its overbilling claims as early as August 2007" (MTD at p.4), Petitioners' claims are time barred under Section 252 of the Act. ComEd does not dispute in its MTD that it switched Petitioner to the higher Rate 6, nor does it contend that Petitioner is somehow qualified to take service under such Rate, and ComEd does



not submit any affidavits to refute that Petitioner acquired actual knowledge of its claims within the time alleged in the Complaint.

4. As hereinafter set forth, Respondent's assertions are both factually disingenuous and legally unfounded. Both the un rebutted allegations of the Complaint (which are controlling as a matter of law) and the informal complaint (which, as a matter of law, should not even be considered by the Commission) are explicit that Petitioner did not acquire actual knowledge of the improper switching and overbilling until November, 2007, that the Complaint was filed within two years of acquiring such actual knowledge and is accordingly not time-barred.

## **II. LEGAL STANDARDS**

5. A motion to dismiss a complaint on the pleadings can be granted only when "it is clearly apparent that no set of facts can be proven" which will entitle a complaining party to prevail. *Illinois Graphics Co. v. Nickrum*, 159 Ill.2d. 469, 488 (1994). In deciding the motion to dismiss, the agency must accept all pleaded facts as true and construe all reasonable inferences in favor of the plaintiff. *Russo v. Boland*, 103 Ill.App.3d 905 (1982). For purposes of a motion to dismiss, facts within an affidavit which are not contradicted by counter-affidavits must be taken as true notwithstanding unsupported allegations in an adverse party's pleadings. *Myers v. Centralia Cartage Co.*, 94 Ill.App.3d 1139 (1981). To prevail on a motion to dismiss under 735 ILCS 5/2-619, it is insufficient to merely refute well-pleaded facts in the complaint or to offer a contrary version of the allegations in the complaint. *Russo v. Boland*, 103 Ill.App.3d 905 (1982); rather, the moving party must set forth facts which constitute affirmative matter

completely negating the plaintiff's cause of action. Bank of Northern Illinois v. Nugent, 233 Ill.App.3d 1 (2d Dist. 1991).

6. When a defendant raises the defense of limitations in a motion to dismiss, it is incumbent on the plaintiff to allege facts sufficient to avoid the statutory limitations, Cundiff v. Unsicker, 118 Ill.App.3d 268 (1983); however dismissal is improper where, as in the present case, the pleadings and affidavits of plaintiff establish a genuine issue of fact as to whether a complaint is barred by limitations. Stevens v. O'Bryant, 74 Ill.App.3d 239 (1979).

7. It is the factual allegations contained in the Complaint (and exhibits thereto) which are controlling for purposes of motion to dismiss; material which merely negated the factual basis upon which plaintiff presents its claims and which was neither certified nor presented by affidavit could not be considered as affirmative matter on a motion to dismiss. Brown v. Morrison, 187 Ill.App.3d 37 (5<sup>th</sup> Dist. 1989). Since well-pleaded facts contained in the Complaint must be taken as true for purposes of a motion to dismiss, discovery depositions and other alleged affirmative matters asserted to defeat a claim cannot be used in determining the sufficiency of a complaint. Hayna v. Arby's Inc., 99 Ill.App.3d 700.

8. Informal complaints before this Commission are governed by 83 Illinois Administrative Code 200.160, which states that:

An informal complaint may be presented orally or in writing and shall contain a concise statement of the facts involved, the specific relief requested, and the name, address and telephone of the complaining person and each person against whom complaint is made. Such complaints will not be docketed and will not initiate a formal proceeding. The Commission acting through its staff will investigate and attempt to resolve informal complaints without formal action. **The presentation of an informal complaint shall be without prejudice to the right to file a formal complaint.** Nothing in this Section shall prohibit the Commission from proceeding on its own motion on the basis of an informal complaint. 83 Illinois Administrative Code 200.160. (*emphasis added*)

9. As ComEd itself has asserted in other proceedings, this Commission has taken the position that an informal complaint is not a formal proceeding, and is wholly “unofficial” and invokes no formal record upon which the Commission is authorized to act. As stated in Malibu Condominium Association vs. Commonwealth Edison Company, Docket No. 08-0401:

It is important to note that the informal complaint process follows no evidentiary rules and results in no official action. Nor does it operate anyway near the same way that a formal complaint proceeding functions. **Nothing said, or done, or produced, in the informal complaint process is ever considered or introduced in the formal complaint proceeding. In other words, a formal complaint begins with an empty record.** It is only in the course of that formal proceeding that the parties bring in evidence to build the formal record. **And, it is only on the basis of that formal evidentiary record that the Commission is authorized to make a decision.** (Order on Rehearing of Interim Order filed December 9, 2009 at p.9). *(emphasis added)*

### III. DISCUSSION

#### **A. Petitioner did not acquire Knowledge of ComEd’s Overbilling, Mismeasurement and other Unlawful Acts until November, 2007**

10. The crux of ComEd’s MTD is that notwithstanding that Petitioner has alleged ten separate causes of action, including violations of statutes and common law claims, it “primarily alleges that it was reassigned to Rate 6”, (MTD at p.5) and therefore, according to ComEd, all its claims, howsoever styled, should be barred under the 2-year limitation period set forth Section 252 of the Act, since Petitioner “...admits that it knew of improper billing claims as early as August 2007”. Both factually and legally, ComEd’s assertions are inaccurate. The allegations of the Complaint, which must be taken as true for purposes of the MTD, unequivocally state that Petitioner did not acquire knowledge of ComEd’s improper switching, overcharging, mismeasurement and billing errors until November, 2007 (Complaint, par. 47) and that at no time prior to November, 2007 did

Petitioner acquire or have any actual knowledge of such improper switching, mismeasurement or overcharging. (Complaint, par. 49). Nowhere in the Complaint does Petitioner “admit” to acquiring knowledge of its claims prior to November, 2007.

11. ComEd’s reliance on alleged contrary statement in Peititioner’s informal complaint (i.e. that in August 2007 preliminary analysis indicated overbilling) is misplaced. The informal complaint is neither verified nor a judicial pleading; under 83 Illinois Administrative Code 200.160; Petitioner’s presentation of the informal complaint cannot prejudice its right to file the Formal Complaint. Moreover, as hereinabove stated this Commission has taken the official position that the informal complaint is not and cannot be part of the official record and that nothing contained or produced in connection with the informal complaint can ever be considered in the formal Complaint proceeding; the formal Complaint begins with an empty record. ComEd’s effort to introduce extraneous, unsworn evidentiary matter to negate the well-pleaded facts set forth in the Complaint is precisely prohibited under 735 ILCS 5/2-619, which mandates that the grounds for dismissal of a claim must appear on the face of the pleading or supported by sworn affidavit. Absent any allegation in the Complaint or affidavit contradicting Petitioner’s assertion that it did not acquire knowledge until November 2007, the MTD must be denied.

12. Moreover, even if the informal complaint could properly be introduced as part of the pleadings for purposes of the MTD, the plain language of the informal complaint negates ComEd’s assertions and is wholly consistent with the facts alleged in the Complaint. The third and fourth grammatical paragraphs of page one of Petitioner’s

informal complaint, which ComEd neglects to reference in its MTD, contain the entirety of Petitioner's discussion of its knowledge of overpayment:

On 3/13/07 we went to our archives where we obtained many of our past electric billings. Then in August 2007, our preliminary analysis indicated that THE Cherry Lane was overbilled by ComEd for ~15 years on 3 of our 4 accounts. Then, in November 2007, our data entry and calculations indicated that ComEd made gross errors when they changed 3 of our 4 accounts from the correct "Rate 14 Residential Service-Space Heating Customers" to the incorrect "Rate 6 General Service".

With this letter, we are claiming a refund from ComEd = **\$214, 321.92** and we are also filing an Informal complaint with the Illinois Commerce Commission, which is less than 12 months after "***first had knowledge***" of ComEd's mistakes and "***incorrect billings***" and which is 9 months after we realized that we actually overpaid for our past consumption of electricity.

As expressly stated by Petitioner in the Informal Complaint (a) Petitioner concluded that ComEd made the alleged errors in November, 2007, and (b) Petitioner realized that the informal complaint, which was filed July 22, 2008, was filed 9 months after the date (i.e. November, 2007) Petitioner realized that it had actually overpaid ComEd for service. Again, these statement are wholly consistent with the controlling allegations of the Complaint to the effect that Petitioner acquired actual knowledge of ComEd's overbilling, mismeasurement and misconduct in November, 2007, which is less than two years prior to the timely filing of the Complaint.

**B. As a Matter of Law, Each of Petitioner's Causes of Action are Legally Cognizable and are not Time Barred.**

13. ComEd further errs in concluding that notwithstanding that Petitioner has alleged 10 separate causes of action, each of which state a legally cognizable claim, each of its causes of action should nonetheless be governed by and time-barred under Section 9-252 of the Act. (MTD, p.6). Such simplistic contention is contrary to law and in particular to the express provisions of Section 9-252.

14. Under ILCS 735 5/2-613, a party may plead multiple counts and recover upon proof of any or all of such counts. Wanless v. Peabody Coal Co., 294 Ill.App. 401 (1938). Accordingly, a contractual relationship may give rise to an action for breach of contract or tort or both, and separate recovery may be had on each such count. Knox College v. Celotex Corp., 88 Ill.2d 407 (1981); appeal after remand, 117 Ill.App.3d 304 (1981). Stated another way, a party has the right to plead and introduce proof on all possible theories of recovery, even if the theories are inconsistent. Rome v. Commonwealth Edison Co. 81 Ill.App.3d 776 (1980). In the present case, in addition to its overbilling, mismeasurements and unjust and excessive rate counts, Petitioner has alleged numerous tariff violations, violations of the Act, and contract and tort claims (Counts IX, XII and XIII). Each of these counts allege different elements as a basis of recovery, and case law is clear that a party may recover under each of these counts. See, e.g., Bloom Township High School et.al. v. Illinois Commerce Commission, 309 Ill.App.3d 163 (1999) (the breach by the utility of the terms of its tariff, or its failure to exercise good faith in connection with the power vested by such tariff, are actionable wrongs). Notwithstanding ComEd's attempt to characterize all of Petitioner's claims as a billing classification dispute, Petitioner's claims that ComEd breached and failed to perform its duties under its tariffs and otherwise violated the Act are separately cognizable from, and not governed by, Section 9-252.

15. Most compellingly, the express language of Section 9-252 provides that a remedy under such Section—i.e. for excess or unjust charges—is cumulative and in addition to any other remedy or remedies provided in the Act. Specifically, the fourth paragraph of Section 9-252 states that:

“The remedy provided in this section **shall be cumulative and in addition to any other remedy** in this Act provided in case of a failure of a public utility to obey a rule regulation, order or decision of the Commission.” (*emphasis added*)

The statutory intent of Section 9-252 is clear—the maintenance of an action for excessive or unjust charges under such section is not the exclusive remedy of the customer and does not absolve the utility from liability for other violations of law or regulations. ComEd’s unsupported conclusions notwithstanding, Section 9-252 does not operate to bar Petitioner’s claims under Rider CABA and Section 16-103.1; by its express terms the limitations period under Section 9-252 relates only to claims of excessive and unjust charges, not to claims of other violations or other rules, regulations and orders of the Commission. As stated above, Section 9-252 expressly provides the remedies for such other violations and are cumulative and in addition to the remedies provided in Section 9-252, and Section 9-252 by its express terms does not operate to bar such remedies.

**C. The Overbilling and Mismeasurement Claims set forth in the Complaint are within the Purview of Section 9-252.1 and are not Time Barred Thereby**

16. ComEd’s unsupported conclusion that all of Petitioner’s claim are barred by Section 9-252 is also erroneous by failing to address or recognize the legal effect of Section 9-252.1 of the Act, which governs claims of incorrect billings. While under Section 9-252, a complaint for “excessive or unjust” charges must be filed within 2 years from the time the service as to which the complaint is made was furnished, such limitation, however, has no application to the situation where there was an error in measuring the quantity of the service or the billing for the same. Illinois Power Co. v. Champaign Asphalt Co., 19 Ill.App.3d 74 (4th Dist. 1974). Rather, errors in measuring

quantity of service or billing for the same are governed by Section 9-252.1, which expressly states that:

When a customer pays a bill as submitted by a public utility and the billing is later found to be incorrect due to an error either in charging more than the published rate or in measuring the quantity or volume of service provided, the utility shall refund the overcharge with interest from the date of overpayment at the legal rate or at a rate prescribed by rule of the Commission. Refunds and interest for such overcharges may be paid by the utility without the need for a hearing and order of the Commission. Any complaint relating to an incorrect billing must be filed with the Commission no more than 2 years after the date the customer first has knowledge of the incorrect billing. 220 ILCS 5/9-252.1.

17. ComEd's contrary suggestion notwithstanding, the plain language of Section 9-252.1 clearly indicates that the customer's "knowledge" of the incorrect billing is actual knowledge. See Americana Towers v. Commonwealth Edison, ICC Docket No. 05-0415 (Proposed order of ALJ), where the Commission also held that under Section 9-252.1, the actual discovery by the complainant is contemplated, not whether the complainant could have or should have discovered the errors. Had the legislature intended that the limitations period would be triggered by the date that the complainant should have had knowledge, the statute would expressly so provide. See Bridgestone/Firestone, Inc. v. Cecil Aldrige et. al., 688 N.E. 2d 90 (1997), (when construing the meaning of a statute, all omissions should be understood as exclusions). In the present case, the fact that the customer received incorrect billings does not alter the fact that the Petitioner did not discover the overbillings and other errors until November, 2007, well within the limitations period of Section 9-252.1.



18. In the present case, the Complaint alleges numerous, specific facts which show that ComEd mismeasured the quantity and supply of electricity sold (Complaint pars. 21-28), including specific allegations that ComEd failed to properly bill for the volume of kws of demand (par. 21), utilized improper WHR meters (par. 22, 25) and improperly billed for “in lieu of demand” charges (par. 25, 26) and that even if Petitioner had been properly switched to Rate 6, ComEd nonetheless mismeasured the electricity supplied after September 19, 2000. The foregoing allegations are **facts**, not, as ComEd dismissively suggests at p.6 of MTD, mere “conclusory and unsupported allegations”. ComEd is duly informed as to precisely what acts comprised the mismeasurement of quantity or volume—i.e. ComEd’s failure to properly measure the kws of demand, its improper utilization of WHR meters, its imposition of improper “in lieu of demand” charges and improper measuring of electric service on Rate 6 with KWs of demand—as well as when and how these acts occurred. These facts must, for purposes of the MTD, be taken as true by the Commission.

19. Inasmuch as the Complaint clearly alleges causes of action arising from ComEd’s mismeasurement of quantity or volume, such claims are within the purview of Section 9-252.1. Under Section 9-252.1, a complaint must be filed “no more than 2 years after the date the customer first has knowledge of the incorrect billing.” 220 ILCS 5/9-252.1. As asserted and verified in the Complaint, Petitioner never authorized or requested the wrongful switching (“slamming”) to Rate 6, and Petitioner did not discover the improper switching, billing errors and overcharges until November 2007. Both Petitioner’s informal complaint and its formal Complaint were manifestly filed within two years of Petitioner’s discovery of the errors and overcharges and are accordingly not time barred.

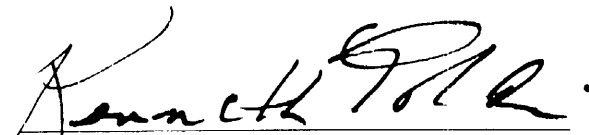
#### IV. CONCLUSION

Notwithstanding ComEd's desire to characterize the subject action as a mere dispute over rate assignment, the Complaint alleges facts which state a prima facie case of improper switching of rates, mismeasurement of quantity and volume of service as well as overbilling. As expressly provided under 735 ILCS 5/2-613 and under Section 9-252 of the Act, Petitioner's causes of action are cumulative. To the extent the Complaint seeks reparations for incorrect billings, such claims are clearly governed by Section 9-252.1, and, inasmuch as the Complaint was brought within two years of the date Petitioner first had knowledge of the incorrect billing, such claims are not time barred.

**WHEREFORE**, Petitioner respectfully request that the MTD be denied in its entirety and that this matter proceed to trial.

Respectfully submitted,

THE CHERRY LANE CONDOMINIUM

By:   
One of its attorneys

Kenneth G. Goldin  
Goldin, Hill & Associates, P.C.  
9100 Plainfield Road  
Brookfield IL 60513  
Tel: 708-485-8300  
FAX: 708-485-8301  
[kgoldin@ghlaw.net](mailto:kgoldin@ghlaw.net)

---